

Federal Court



Cour fédérale

**Date: 20130423**

**Docket: T-1369-12**

**Citation: 2013 FC 419**

**Toronto, Ontario, April 23, 2013**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**PUWANENDRAN SATHASIVAM,  
SAKUNTHALATHEVY EHAMPARAM,  
NISHANTH PUVANENDRAN**

**Applicants**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The Applicants seek judicial review of a decision of the Director, Investigations Division, Security Bureau of Passport Canada dated June 12, 2012; wherein it was determined that the passport issued to Nishanth Pavanendran would be revoked and passport services, save for urgent, compelling and compassionate reasons, would be refused to the Applicants for a period of five years; that is, until October 16, 2016.

[2] For the reasons that follow, I have determined that the application will be dismissed with costs.

[3] The Applicants are a family; Puwanendran Sathasivam, is the father/husband; Sakunthalathevy Ehamparam, is the mother/wife; and Nishanth Puvanendran, is the son who at the material time was about eleven (11) years old.

[4] It appears that the husband and wife were, in the fall of 2011, in possession of valid Canadian passports. They applied for a passport for their son on an urgent basis. The son received this passport on September 21, 2011.

[5] Within a few weeks, a person pretending to be the son attempted to enter Canada using the son's passport. This person said that the passport had been handed over at the airport in Canada to a "white man" and has not been seen since. That passport had not been reported by the Applicants as lost or stolen. In an affidavit submitted by the mother to Passport Canada, she attested that the son's passport had been placed in a "pigeon hole" in the father's vehicle from where it "may" have been lost or stolen, or taken.

[6] There is no evidence that the son ever used the passport, or why the parents requested that the passport be issued on an urgent basis.

[7] In January 2012, the father and mother on separate days applied to have their passport renewed. At that time, there was no report made by them that the son's passport had been lost or

stolen. On January 30, 2012, Passport Canada wrote to the mother raising their concern as to possible misuse of the son's passport and requesting submissions and a statement under oath addressing those concerns. In part, the letter said:

*Our investigation thus far has revealed the following:*

*On September 21, 2011, you and your husband appeared at Passport Canada's Scarborough office and submitted a passport application in the name of your son, Nishanth Puvanendran. Your signature appears in the Applicant section on this passport application form. Additional fees were paid to ensure that the passport would be produced quickly. Based on this application, passport QB849626 was issued in the name of your son on September 27, 2011, and the passport was picked up at the Scarborough office on September 29, 2011. By signing as the applicant on the application form in the name of your son, you are responsible for the care and control of the passport.*

*Passport Canada has received information from the Canada Border Services Agency (CBSA), indicating that on October 16, 2011, an imposter entered Canada illegally at the Pearson International Airport in Toronto, having arrived on Air Canada flight 879 from Zurich. According to flight records, this individual used Canadian passport QB849626, issued in the name of your son, to board the flight. The CBSA also reports that the ticket used by the imposter was purchased on October 11, 2011, from a travel agency in Scarborough. CBSA officials also confirmed that they have no record of any other travel for passport QB849626. Passport QB849626 has not been reported lost or stolen to Passport Canada to date. CBSA officials also report that the document was not recovered from the imposter upon his arrival.*

*Reviewing this file, the Division notes that:*

- *you and your husband paid additional fees to have a passport in your son's name produced quickly,*
- *eleven days after receiving the passport, tickets were purchased in your son's name that were later used by an imposter*
- *the imposter travelled to Canada using passport QB849626 less than three weeks after it was issued,*
- *the passport has not been declared lost or stolen, and*
- *the only record of passport QB849626 being used was by an imposter.*

*Given this information, the Division finds on a balance of probabilities test that you allowed passport QB849626, issued in the name of your son, to be used by another individual.*

[8] The Applicants responded by a letter from their solicitor, accompanied by affidavits of the father and mother.

[9] On April 23, 2012, Passport Canada wrote to the Applicants' solicitor acknowledging receipt of the submissions, and stating that the submissions did not present any new information such as would require further investigation. That letter indicated that a decision to refuse passport services for a five-year period would come soon. No further submissions were made on behalf of the Applicants.

[10] On June 12, 2012, Passport Canada sent a further letter to the Applicants' solicitor. This is the decision at issue. In part that letter states:

*After a thorough review of all the information gathered throughout the investigation and your submissions it has been determined that there is sufficient information to support a conclusion that Mr. Sathasivam allowed another person to use passport QB849626 issued in the name of his son Nishanth Puvanendran.*

- *Your client and his wife presented themselves at a Passport Canada office in Scarborough on September 21, 2011 and submitted a passport application in the name of their son Nishanth Puvanendran with a request for urgent service. Your client signed as the co-applicant on his son's passport application and as such, is responsible for safeguarding the document.*
- *On October 16, 2011, less than three weeks after the passport was issued, an imposter entered Canada illegally using Canadian Passport QB849626 issued in*

*the name of your client's son. The passport was not reported lost or stolen at that time.*

- *Your client explains that the passport in question was kept in his car and had gotten lost unbeknownst to him. I find it highly unlikely that a passport issued upon submission of an urgent request for passport service, would go missing without your client's knowledge.*
- *Your client has not been able to provide a reasonable and plausible explanation as to how a passport issued in his son's name on September 27, 2011, was used by another individual on October 16, 2011, to travel from Zurich to Toronto, on a ticket purchased from a travel agency in Scarborough, Ontario.*

*Given the aforementioned, it is important to note that criminal proceedings are separate from any action taken by Passport Canada. As previously mentioned, Passport Canada does not seek long term sanctions against children in these cases. Therefore, the decision is to revoke passport QB849626 issued in the name of your client's son Nishanth Puvanendran, under section 10(2)(c) of the Canadian Passport Order, SI/81-86, as amended (the Order), and to **impose a period of refusal of passport services on your client until October 16, 2016**, pursuant to section 10.2 of the Order. The duration of refusal of passport services, which is usually five years, has been computed to correspond with the date passport QB849626 was misused, which was October 16, 2011. This reflects the seriousness with which we regard passport abuse, misuse or misinformation in the context of entitlement to passport services.*

[11] The Applicants seek to have that decision set aside and returned for redetermination.

[12] The issues raised for determination by this Court are:

1. What is the standard of review?
2. Does Passport Canada have the power to revoke the passport of the child in these circumstances?

3. Does Passport Canada have the power to refuse passport services to the parents for a limited period of time in these circumstances?
4. Was the decision reasonable?
5. Was Passport Canada wrong in not holding a hearing nor disclosing the identity of the imposter to the Applicants?

**1. What is the standard of review?**

[13] The question as to whether or not Passport Canada has the authority to impose a particular sanction is to be reviewed on the standard of correctness (*Hrushka v Canada (Minister of Foreign Affairs)*, 2009 FC 69 at para 13). If it did have such authority, then the exercise of that authority is to be reviewed on the standard of reasonableness (*Kamel v Canada (Attorney General)*, 2008 FC 338, at paras 58 – 59).

**2. Does Passport Canada have the power to revoke the passport of the child in these circumstances?**

[14] This issue is to be determined on the standard of correctness.

[15] The affidavit of Hubbard, as filed by the Respondent, including the cross-examination conducted in writing by the Applicants' solicitor, sets out some of the history respecting passports issued to children. Critical to the issuance of Canadian passports is the *Canadian Passport Order*, a federal Regulation respecting the issuance of passports. The *Order* as it was published in the Canada Gazette in 1981, P.C. 1981-1472, 4 June 1981, section 7 provided that where a child had not

attained sixteen years of age, that child's name could be entered in the passport of one of the child's custodial parents or legal guardian. No separate passport would be issued to the child. That was the circumstance in *Hrushka*, supra.

[16] In December 2001, an Order was published in the Canada Gazette amending the *Canadian Passport Order*, P.C. 2001-2277. That amendment changed the provisions of section 7 of the *Order* such that an "applicant" who was a custodial parent of a child under sixteen years of age could apply to have a passport issued to the child. The passport, once issued, was to be delivered to the parent, who was requested to review it to ensure that the information is correct; and, if not, to notify Passport Canada.

[17] The *Canadian Passport Order* was further amended in 2004, and again in 2009 and 2012. The *Order* as it was in place during the relevant period in 2012, provided that Passport Canada could revoke a passport in circumstances, *inter alia*, where the person permits another person to use a passport, and includes the power not only to revoke, but also to impose a period of refusal of passport services. I repeat sections 10(2)(c) and 10.2 of the *Order*:

10. (2) In addition, Passport Canada may revoke the passport of a person who

...

(c) permits another person to use the passport;

...

10. (2) Il peut en outre révoquer le passeport de la personne qui :

...

c) permet à une autre personne de se servir du passeport;

...

10.2 The authority to make a decision to refuse to issue or to revoke a passport under this Order, except for the grounds set out in paragraph 9(g), includes the authority to impose a period of refusal of passport services.

10.2 Le pouvoir de prendre la décision de refuser la délivrance d'un passeport ou d'en révoquer un en vertu du présent décret, pour tout motif autre que celui prévu à l'alinéa 9g), comprend le pouvoir d'imposer une période de refus de services de passeport.

[18] The *Order*, therefore, is quite clear; Passport Canada may revoke “the passport of a person” that permits another person to use the passport. Thus, on the basis of correctness, Passport Canada has the authority to revoke the passport of a child. The question as to whether, in the circumstances of this case, it did so properly, is to be determined on a standard of reasonableness. This will be considered in dealing with the fourth issue.

3. **Does Passport Canada have the power to refuse passport services to the parents for a limited period of time in these circumstances?**

[19] Subsection 10.2 of the *Order* as set out above gives Passport Canada the power:

- to refuse to issue a passport
- to revoke a passport
- to impose a period of refusal of passport services.

[20] The first two powers are specific to “a passport” or an application for “a passport”. The third is more broadly stated; it is a refusal of “passport services”. Subsection 10.2 does not specifically state to whom passport services are to be refused.



[21] The *Interpretation Act*, RSC 1985, c. I-21, is of assistance. Section 12 provides that enactments are to be deemed to be remedial and to be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. The *Canadian Passport Order*, as previously discussed, originally provided that the name of a child under sixteen years of age could be inserted into the passport of one of the child's parents. The *Order* was amended so that a parent would have to apply for a separate passport for the child. The passport was that of the child, but the applicant was one or both of the parents.

[22] Therefore, the proper interpretation of the *Order*, as amended, is that "passport services" are those provided to the applicant parent or parents in the case of a child that is under sixteen years of age. If those parents are seen to be abusing the passport system in the misuse of the child's passport, it would be a correct to interpretation of the provisions of the *Order* that Passport Canada has the power to withhold passport services rendered to the parents.

[23] A passport remains the property of Her Majesty in Right of Canada (*Order*, subsection 3(c)). As stated in *Okhionkpanmwonyi v Canada (Attorney General)*, 2011 FC 1129, at paragraph 6, that while the *Canadian Charter of Rights and Freedoms* affords a right to enter and leave Canada - a right which is facilitated by a passport - misuse of a passport such as the facilitation of its misuse by imposters to seek entry into Canada, is not to be tolerated.

[24] A correct interpretation of subsection 10.2 of the *Order* is that Passport Canada may refuse passport services for a period of time to a person, such as a parent, who has applied for a passport for a child; which passport has been misused.

**4. Was the decision reasonable?**

[25] I have determined that a correct interpretation of the relevant provision of the *Canadian Passport Order* is that Passport Canada can revoke the passport issued to the child and can refuse passport services, for a period of time, to the parents who applied for that passport. Was the decision to do so in this case reasonable?

[26] Having reviewed the record, I am satisfied that the decision at issue was reasonable, given the fact that the parents applied for the child's passport on an urgent basis; and when subsequently asked, provided no good explanation as to the urgency; and, given that only a few weeks later, the passport turned up in the hands of an imposter trying to enter Canada; and, given that the parents did not report the passport lost or stolen, and only subsequently opined that it "may" have been lost or stolen from a "pigeon hole" in the father's vehicle; I conclude that it was reasonable for Passport Canada to determine that the child's passport should be revoked; and that, for a period of five years, passport services should be denied to the parents. Even then, the parents were told that if circumstances such as compassionate circumstances arose, they may apply for temporary services.

**5. Was Passport Canada wrong in not holding a hearing nor disclosing the identity of the imposter to the Applicants?**

[27] The Applicants were given at least two opportunities to respond to the concerns of Passport Canada. Their responses were unsatisfactory. There is no requirement in the *Order* nor in any other

pertinent legislation or regulation that a hearing be held. The Applicants, in any event, made no request for a hearing.

[28] The identity of the imposter is irrelevant to the issues raised. There was no need to disclose that identity. I repeat what Justice Gleason of this Court wrote in *Slaeman v. Canada (Attorney General)*, 2012 FC 641 at paragraph 37:

*37 Kamel did not decide that Passport Canada must disclose every matter it inquires into or even that it must disclose every document that it provides to the decision-maker. Rather, it held that Passport Canada must disclose to both the decision-maker and the individual under investigation all the information it gathered that is relevant to the determination to be made. Arguably, the above-cited passages from Kamel may go slightly further and provide that any information given to the decision-maker must also be provided to the applicant, even if it is immaterial. However, the need to disclose immaterial information was not squarely addressed in Kamel as the case concerned a highly relevant and prejudicial report that was provided to the Minister - but not to Mr. Kamel - which played a central role in the Minister's decision to permanently suspend passport services for Mr. Kamel. In my view, Justice Noël's comments regarding what must be disclosed by Passport Canada should be read bearing these facts in mind, and, accordingly, do not stand for the proposition that it is a breach of natural justice for Passport Canada to fail to disclose irrelevant documents that it might send to the adjudicator. While it might be a more prudent practice for Passport Canada to provide identical disclosure to the adjudicator and the individuals under investigation (and thereby ensure it would be immune from challenges of this nature), in my view, there is no breach of natural justice where, as here, buried in the file forwarded to the adjudicator there are a few irrelevant facts that were not disclosed to the individuals under investigation.*

**CONCLUSION**

[29] Therefore, the application for judicial review will be dismissed, with costs, which I fix at \$2,000.00.

**JUDGMENT**

**FOR THE REASONS PROVIDED:**

**THIS COURT ADJUDGES that:**

1. The application is dismissed; and
  
2. The Respondent is entitled to costs in the sum of \$2,000.00.

"Roger T. Hughes"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1369-12

**STYLE OF CAUSE:** PUWANENDRAN SATHASIVAM,  
SAKUNTHALATHEVY EHAMPARAM, NISHANTH  
PURANENDRAN v ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 23, 2013

**REASONS FOR JUDGMENT  
AND JUDGMENT:** HUGHES J.

**DATED:** April 23, 2013

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